

APPEAL NO. 040654
FILED MAY 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2004. The hearing officer decided that: (1) the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; (2) the date of injury (DOI) of the claimed occupational disease injury is _____; (3) the respondent (carrier) is relieved from liability under Section 409.002 because the claimant failed, without good cause, to timely report the claimed injury to his employer pursuant to Section 409.001; (4) the carrier is relieved from liability under Section 409.004, because the claimant failed, without good cause, to timely file an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) with the Texas Workers' Compensation Commission within one year of the injury as required by Section 409.003; and (5) the claimant did not have disability. The claimant appeals the injury, notice, timely filing, and disability determinations on sufficiency of the evidence grounds. The claimant also asserts that the time for filing a TWCC-41 was tolled under Section 409.008. The carrier urges affirmance. The hearing officer's DOI determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Nor can we conclude that the hearing officer abused his discretion in reaching this determination. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

Given our affirmance of the hearing officer's decision above, we need not address the claimant's assertion that the time for filing a TWCC-41 was tolled under Section 409.008.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge